

REMARKS

Claims 2-15, 20-34, 39-53, and 96-99 are pending in this application. The Examiner rejects all of the pending claims.

Claims 58-72 have been canceled.

Claim 96 is amended and other claims have been amended accordingly to match the antecedent basis.

Report of Interview

Applicants interviewed with the Examiner on January 23. We went over what we were seeking to patent and discussed changes in claim language that the Examiner might consider to express our use of a unified causal calendar, which distinguishes over the art of record. Before the interview, we had submitted a claim which was not entered. We discussed changes to the wording of the non-entered claim that would bring out the significance of a unified causal calendar, as one among the points of novelty in the overall claim.

We also discussed how to determine the level of skill in the art, following BPAI's decision In re Judd, decided approximately one year ago. In light of the BPAI informational decision, we consider it necessary to look to the level of detail provided in the application and the cited references as primary indicators of what instruction one of skill in the art would look for to justify revision of inventory control technologies that have evolved over millennia. We pointed out that the overall combined application of this assignee, Pat. No. 7,092,929, includes 49 drawing sheets and 84 columns of disclosure. References such as Landvater and Huang, on which the Examiner primarily relies, are similarly long and detailed. From In re Judd, the compelling conclusion is that a very detailed teaching is required to change the way that retailers approach computerized inventory control. It is not enough to speculate about what a clever programmer might do in another field of endeavour.

We encourage the Examiner to call with the results of her supplemental search, so that we can arrange a further amendment, if need be, to place the case in condition for allowance.

Rejection Under 35 U.S.C. § 103(a) of Claims 2-15, 20-34, 39-53, and 96-99

The Examiner rejects **claims 2-15, 20-34, 39-53, and 96-99** under 35 U.S.C. § 103(a) as unpatentable over Huang et al. (US 6,151,582) in view of Landvater (US 6,609,101).

Claim 96

Claim 96, as amended, includes the limitations:

A computer-implemented method of generating reports from forecasted unit inventory and unit sales on a bottom-up per-store basis for a multitude of items at a plurality of stores, including:

unifying treatment of promotion and non-promotion events that impact demand across the items and the stores and that impact particular items at particular stores by tracking a plurality of promotion events and a plurality of non-promotion events with a unified causal event calendar,

which said causal event calendar is a data structure stored in computer readable memory, wherein an event data tuple for an event in the causal event calendar includes at least a good identifier, a store identifier, a start date, a stop date and an event type identifier;

forecasting unit inventory and unit sales at a per-item, per-store level using the causal event calendar, by identifying one or more events applicable to an item-store pair and using the event type identifiers for the applicable events to automatically select a demand modifiers that correspond to demand impacts caused by the events; and

generating, from results of the forecasting using the causal event calendar consistently across analytical tools, analytical reports for ordering, distributing, and bottom-up planning prepared using at least some of the per-item, per-store location level event detail from the causal event calendar.

These limitations are not found in Huang et al. in view of Landvater.

In this claim, we mean for the good identifier to identify a single good or group of goods and the store identifier to identify a single outlet (e.g., retail store) or a group of outlets, so that the ultimate item-store granularity can be supported, but a system wide promotion need not produce a multiplicity of nearly identical records when a more compact representation is available.

As compared to Huang and features that the office action borrows from Landvater, our unified calendar improves on the incomplete and fragmented approaches of the references, which become more fragmented as the multiple references are modified and aggregated. None of references cited describe a unified

causal calendar with item-selling location granularity. Because the references take different approaches, selecting features from one and the other results in an aggregation, not a unified approach.

Following In re Judd, the level of detail presented in the references and in this and its related comprehensive application demonstrate that very specific teachings are required to revamp the way that inventory control is managed. Moreover, the presentation that we made to the Examiner at the outset of prosecuting this group of cases showed that Bluefire's overall system, including the unified causal calendar, actually produced a substantial productivity gain, both in personnel and inventory turns, and that Bluefire met a long felt need for improved efficiency. In light of In re Judd, the level of skill in the inventory planning systems art will not support a generalized assertion that system redesigns that have produced substantial productivity gains for Bluefire clients would be obvious to one of ordinary skill in the art, as a matter of general progress.

Therefore, claim 96 should be allowable over Huang et al. in view of Landvater.

Claim 97

Claim 97 as amended includes the limitations:

The method of claim 96, further including as event types with corresponding event type identifiers, events involving decisions by a retailer and exogenous factors, wherein

the decisions by the retailer include price promotions, advertising promotions, promotions of substitute or complementary products, removal of substitute or complementary products from a selling assortment, and new product introduction; and

the exogenous factors include approaching holiday events, seasonal events, and special events in a city that increase customer traffic at a store.

These limitations are not found in Huang et al. in view of Landvater.

Neither Huang nor Landvater teach event type identifiers in a unified causal calendar to represent “*promotions of substitute or complementary products, removal of substitute or complementary products from a selling assortment, and new product introduction*” or “*special events in a city that increase customer traffic at a store*”. We agree that the Examiner is looking to Huang, not to Landvater, to meet these limitations.

As we previously explained, Huang relies on either promotion class or promotion type attributes to adjust demand. (Resp. 8-6-2007, at 15) Huang's wording is promotion class or promotion type; our claim wording is as quoted above. The Examiner specifically relies (OA 10-11-2007 at 17) on the passage from column 22:15-30 that explains Huang's "type of promotion" (line 20) and "class of promotion" (line 21).

Huang's promotion class and type attributes do not read on a "unified causal calendar" with "*event types [and] corresponding event type identifiers*" that represent "*promotions of substitute or complementary products, removal of substitute or complementary products from a selling assortment, and new product introduction*" or "*special events in a city that increase customer traffic at a store*". Huang's mention in columns 13 and 22 of "price promotions, advertising promotions, promotions of substitute or complementary products" (OA 10-11-2007 at 17) is not part of a unified causal calendar and, therefore, does not read on the claimed "event types with corresponding event type identifiers" as part of a unified causal calendar.

Therefore, claim 97 should be allowable over Huang et al. in view of Landvater both because it depends from an allowable claim and for the additional reasons given.

Claims 98-99

Claims 98-99, which depend, respectively, from claims 96-97, include the limitations as amended:

The method of claim 96, wherein generating analytical reports consistently using the causal calendar data structure further includes reports to support:

ordering items from suppliers,

allocating item inventory for seasonal or fashion items received from suppliers among stores,

distributing items from a distribution center to stores,

bottom-up planning of sales, on-hand inventory and receipt of items into inventory,

top down planning that aggregates items at levels higher than individual items,

open to buy management reports that compare future inventory levels aggregated to a department level or higher with budgeted levels of inventory investment, and

markdown management that recommends timing and level of markdowns of

seasonal or fashion items in order to sell out available inventory by a predetermined out date.

These extensive limitations are not found in Huang et al. in view of Landvater.

We provided extensive discussion of the lack of causal calendar support for reports that support “allocating item inventory”, “distributing items” from DCs, “bottom-up planning” and “open to buy management” in our last response (Resp. 8-6-2007 at 17-18) to which the Examiner only partially replied (OA 10-11-2007 at 18). We incorporate that discussion again, by reference. The Examiner says there “is no requirement for a report to be generated concerning individual sales activity”, which would be true if we had used “or” before the last element instead of “and”. The Examiner must give patentable weight to all of the elements because the claims says “and”.

We pointed out (*id.* at 19) that the Examiner has admitted that neither reference addresses markdown management timing or levels. (OA 2-8-2007 at 7) (“Huang et al. does not expressly disclose that the markdown management recommends timing and level of markdowns. Landvater does not expressly disclose recommending timing and level of markdowns.”) We specifically criticized the Examiner for attempting to substitute official notice for a teaching to use simulation at a store level to generate markdown timing and level recommendations. Our point was that we have worked through six related cases over several years, some of which involve markdown management, without seeing a reference that teaches what the Examiner wants to officially notice. We have debated TSI’s treatment of markdown management, which does not fill the gap between other art that Examiner has found and what we claim. We pointed to the Examiner’s burden of presenting a reference that includes a written description that reads on markdown management as claimed. *In re Payne*, 606 F.2d 303, 314-15, 203 USPQ 245 (CCPA 1979) *citing*, *In re Brown*, 329 F.2d 1006, 141 USPQ 245 (CCPA 1964) (rejection reversed); *see*, *In re Sheppard*, 339 F.2d 238, 52 C.C.P.A. 859, 1964 CCPA LEXIS 263, 1965 Dec. Comm’r Pat. 107, 144 U.S.P.Q. (BNA) 42 (C.C.P.A. 1964) (rejection reversed); *In re LeGrice*, 301 F.2d 929, 49 C.C.P.A. 1124, 1962 CCPA LEXIS 278, 1962 Dec. Comm’r Pat. 707, 133 U.S.P.Q. (BNA) 365 (C.C.P.A. 1962) (rejection reversed); 1-3 Chisum on Patents § 3.04 [1][b][v] to [1][c]. We invoked MPEP § 2144.03, and argued that the Examiner must now provide either a declaration or documentary evidence to support the rejection, instead of purported official notice.

The Examiner replied (OA 10-11-2007 at 18-19) that we must do more to traverse the purported official notice before the Examiner has to provide evidence to support the purported fact. The Examiner's position is contrary to MPEP § 2144.03 at 2100-146 to 147 (Rev. 6, Sept. 2007), which limits official notice to facts "capable of instant and unquestionable demonstrating as being well-known." If the Examiner's position were capable of instant and unquestionable selection of a reference that would demonstrate use of a unified causal calendar to generate a "markdown management report that recommends timing and level of markdowns of seasonal or fashion items", the Examiner would have instantly produced the reference instead of debating the burden of proof. "If Applicant challenges a factual assertion as not properly officially noticed ..., the Examiner must support the assertion with adequate evidence." *Id.* at 2100-147 to 148 (title of subsection C). All we needed to do was be specific about the official notice that we were challenging, then the burden shifted back to the Examiner. But we did more, pointing to the extensive treatment of inventory management in more than a dozen office actions and the lack of a reference anywhere that presents the claimed combination or the officially noticed element. On the current record, the Examiner has not carried her burden of proof, even after specifically being challenged.

These claims should be allowable over Huang in view of Landvater.

Claims 2-15, 20-34, 39-53, and 99

Claims 2-15, 20-34, 39-53 and 99 depend from the amended claim 96 should be allowable over Huang et al. in view of Landvater because they depend from an allowable claim and for the reasons stated in prior office actions, which are hereby incorporated by reference.

CONCLUSION

Applicants respectfully submit that the pending claims are now in condition for allowance and thereby solicit acceptance of the claims as now stated.

Applicants would welcome an interview, if the Examiner is so inclined. The undersigned can ordinarily be reached at his office at (650) 712-0340 from 8:30 a.m. to 5:30 p.m. PST, Monday through Friday, and can be reached at his cell phone at (415) 902-6112 most other times.

Fee Authorization. The Commissioner is hereby authorized to charge underpayment of any additional fees or credit any overpayment associated with this communication to Deposit Account No. 50-0869 (BLFR 1003-1).

Respectfully submitted,

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